IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-06-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION NO.31031 OF 2004

R. Natarajan,
S/o.C. Rameswaralingam .. Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Chief Secretary to Government,
   Public (Special-A) Department,
   Fort St. George, Chennai 9.

2. The Registrar General,
   High Court of Madras,
   Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the first respondent in connection with the impugned order vide Reference G.O.Ms.No.1365 Public (Special-A) Department dated 10.9.2004 and quash the same and to direct the respondents to reinstate the petitioner in service with continuity of service, all monetary and attendant benefits.

For Petitioner : Mr.T.R. Rajagopalan
Senior Advocate for
Mr.T.R. Rajaraman
For Respondent-1 : Mrs.V. Velumani, A.G.P.,

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J U D G M E N T

P.K. MISRA, J

The present writ petition has been filed to quash G.O.Ms.No.1365 dated 10.9.2004 under which the present petitioner was compulsorily retired under Fundamental Rule 56(2) on completion of the age of 50 years. Such order of retirement issued by the Government was based on the recommendation of the High Court.

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2. The petitioner joined in service as Judicial Magistrate in November, 1988 and worked in different capacities in different places. In March, 1998, he was promoted as Subordinate Judge and initially worked as Principal Subordinate Judge, Tenkasi in Tirunelveli District upto September, 2000 and thereafter as the Chairman of Taxation Appellate Tribunal, Tirunelveli Corporation. Subsequently he was promoted as District Judge and posted as Fast Track Court Judge with effect from 21.2.2002. The Administrative Committee of the High Court in its meeting dated 22.3.2004, while recommending continuance of several other Judicial Officers, recommended that the present petitioner should be retired compulsorily under Fundamental Rule 56(2). The recommendation is to the following effect:-

> "... Taking into consideration the remarks recorded in the Confidential Reports, Work Done Statements and all other relevant records including the latest Vigilance Reports relating to Thiru R. Natarajan, Additional District Judge, Fast Track Court - I, Villupuram at Tindivanam. ... As per the guideline prescribed under G.O.Ms.No.623 dated 14.7.1983 it is resolved that it is just and necessary to retire compulsorily Thiru R. Natarajan on attaining the age of 50 years as his continuance in service is against the public interest."

Such recommendation was placed before all the Honourable Judges by way of circulation. Thereafter, the matter was forwarded to the Government which accepted the proposal and the order of compulsory retirement was passed. Review Application filed by the petitioner has not been disposed of. Thereafter the present writ petition has been filed.

3. The petitioner has sought to challenge such order mainly on the following grounds :-

(1) The decision of the Administrative Committee was not placed before the Full Court.

(2) The overall performance of the petitioner, as demonstrated from the work done statement, do not indicate that the petitioner was useless and had become a dead wood warranting compulsory retirement. The order of compulsory retirement had been given much publicity in T.V. Channels and newspapers, which clearly casts stigma on the petitioner.

(3) The report of enquiry conducted by the District Judge had been examined by the High Court and the explanation given by the petitioner at that stage had been accepted and, therefore, on the basis of such report no order should have been passed.

(4) There is no factual basis to justify the few adverse remarks and the official memos served on the petitioner containing adverse remarks do not spell out the details so as to enable the petitioner to meet those allegations and, therefore, such adverse remarks should not have been considered for the purpose of passing the order of compulsory retirement.

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(5) Adverse remarks had been passed prior to the promotion of the petitioner as a District Judge. Promotion to Fast Track Court was on the basis of merit after taking into account the overall performance and since he was considered meritorious enough to be promoted, on the basis of self-same record, he should not have been compulsorily retired.

4. A counter affidavit has been filed on behalf of the second respondent, namely, the Registrar General of the High Court of Madras. In the said counter affidavit it has been indicated that the Review-cum-Screening Committee considered the records of the petitioner by taking into account the relevant provisions and after following the guidelines enumerated in G.O.Ms.No.623 dated 14.7.1983 and there is no arbitrariness in the recommendation. It has been further indicated that the order of compulsory retirement cannot be considered as one of the punishment and the petitioner had been retired in the public interest in accordance with Fundamental Rule 56 and has not been passed as a punitive measure. It has been further stated that the decision of the Administrative Committee was circulated and placed before all the Honourable Judges.

5. Fundamental Rule 56(2) is as follows :-

"56(2) Compulsory Retirement. - Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice at any time after he has attained the age of fifty years or fifty-five years in the case of Basic Servants, as the case may be, or after he has completed thirty years of qualifying service.

Explanation I. - "Appropriate authority" means "the authority which has the power to make substantive appointments to the post of service from which the Government servant is required to retire."

Explanation II.- Omitted.

Explanation III.- In computing the notice period of three months, the date of service of the notice shall be included.

Explanation IV.- Omitted.

Explanation V. - The powers conferred on the "appropriate authority" under the sub-rule may also be exercised by any higher authority.

Explanation VI.- The term "qualifying service" means "permanent or officiating service (including temporary service under emergency provisions)rendered in a post included in a pensionable establishment without interruption"."

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6. The State Government has issued several instructions in the matters relating to compulsory retirement of civil servants under the State. All those instructions were consolidated, updated and re-issued in G.O.Ms.No.623 dated 14.7.1983. The salient features of the said G.O. can be noticed.

The object of the scheme of compulsory retirement is to weed out the dead wood in order to maintain a high standard of efficiency and integrity in the State Services. The first review of the officers shall be done approximately six months before the age of 50 years or completion of 30 years whichever is earlier and the second review shall be done after approximately attaining the age of 55 years. As per paragraph 4 of such G.O., indicating about the types of cases, which may be put up before the Review Committees for review, it is indicated :-

> "4. The following types of cases may be put up before the Review Committees for review.- (i) In cases where the Government have a reasonable cause to believe that an officer is lacking in integrity, this would be an appropriate ground to consider him for compulsory retirement irrespective of an assessment of his ability or efficiency in work.
>
> (ii) In cases where Government have reason to believe that an officer habitually takes bribes but there is no definite proof of a specific act of corruption, or where the officer has a bad reputation and where there is abundant suspicion against him even though the guilt may not have
> been established in a criminal case, such case can be brought up for review.
>
> (iii) Cases where an Officer's integrity is not in doubt, but his physical or mental condition is such as to make him inefficient for further service or render him unfit to discharge his duties properly.
>
> (iv) cases of Officers against whom there are repeated complaints of corruption;
>
> (v) Cases of Government servants who although have done well in the lower grades, are not considered adequate for the responsibilities of the posts they occupy or will not be able to perform efficiently in their posts for the next 3/5 years."

7. A perusal of the relevant Rules makes it clear that the appropriate authority has absolute right to retire any Government servant at any time after such Government servant had attained the age of 50 years or 55 years, as the case may be, provided that the appropriate authority comes to the conclusion that it is in the public interest.

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8. Various instructions issued by the Government from time to time, which has been consolidated in G.O.Ms.No.623 dated 14.7.1983, indicate that the object of retiring a person pre-maturely is to weed out the dead wood or maintain a high standard of efficiency and integrity in the service. Paragraph 4 of such G.O., makes it clear that where there is reasonable cause to believe that the officer is lacking in integrity, such a case would be an appropriate case for considering compulsory retirement irrespective of the assessment of ability or efficiency in work. What is stated in general terms in such G.O., would obviously apply with more vigour to the case of a Judicial Officer holding the post in Judiciary, where the fate of various litigants is required to be decided.

9. Before examining in detail the various contentions raised by the petitioner, it would be appropriate to refer to some of the relevant decisions holding the field. Most of the decisions relating to compulsory retirement have been considered and analysed in the decision of the Supreme Court in (1992) 2 SCC 299 (BAIKUNTHA NATH DAS AND ANOTHER v. CHIEF DISTRICT MEDICAL OFFICER, BARIPADA AND ANOTHER) and the ratio laid down in such decision is followed in several other decisions. It is convenient to start with the decision reported in (1992) 2 SCC 299 (cited supra), wherein the Supreme Court summarised the ratio in the following words :-

> "32. We may not be understood as saying either that adverse remarks need not be communicated or that the representations, if any, submitted by the government servant (against such remarks) need not be considered or disposed of. The adverse remarks ought to be communicated in the normal course, as required by the rules/orders in that behalf. Any representations made against them would and should also be dealt with in the normal course, with reasonable promptitude. All that we are saying is that the action under F.R.56(j) (or the rule corresponding to it) need not await the disposal or final disposal of such representation or representations, as the case may be. In some cases, it may happen that some adverse remarks of the recent years are not communicated or if communicated, the representation received in that behalf are pending consideration. On this account alone, the action under F.R.56(j) need not be held back. There is no reason to presume that the Review Committee or the government, if it chooses to take into consideration such uncommunicated remarks, would not be conscious or cognizant of the fact that they are not communicated to the government servant and that he was not given an opportunity to explain or rebut the same. Similarly, if any representation made by the government servant is there, it shall also be taken into consideration. We may reiterate that not only the Review Committee is generally composed of high and responsible officers, the power is vested in government alone and not in a minor official. It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an

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unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided by Article 226 of the Constitution is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action."

10. The aforesaid decision has been subsequently followed in several other decisions such as (1997) 6 SCC 228 (I.K. MISHRA v. UNION OF INDIA AND OTHERS), (2001)3 SCC 389 (STATEOF U,.P. AND ANOTHER v. LALSA RAM), (2001) 3 SCC 314 (STATE OF GUJARAT v. UMEDBHAI M. PATEL), 2003 (7) Supreme 179 (NAWAL SINGH v. STATE OF U.P. AND ANOTHER). Out of these later decisions, it would be apt to refer particularly the decision reported in (2001) 3 SCC 314 (cited above), wherein it was observed as follows :-

"11. The law relating to compulsory retirement has now crystallised into a definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii)Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii)For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv)Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v)Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi)The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii)If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii)Compulsory retirement shall not be imposed as a punitive measure."

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11. The decision reported in 2003(7) Supreme 179 (cited supra) is also to be particularly noticed, wherein the principles laid down in Baikuntha Nath Das case and other cases are reiterated. The introductory comments made in such decision will however required to be kept in view as it has got seminal importance while considering the case of a judicial officer. The Supreme Court had observed :-

> "2. At the outset, it is to be reiterated that the judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility. If such evaluation is done by the Committee of the High Court Judges and is affirmed in the writ petition, except in very exceptional circumstances, this Court would not interfere with the same, particularly because order of compulsory retirement is based on the subjective satisfaction of the Authority."

12. Keeping in view the well settled principle as enunciated in the above decisions, the contentions raised by the petitioner are required to be considered.

13. Learned counsel appearing for the petitioner has contended that the recommendation relating to compulsory retirement of the petitioner made by the Review-cum-Screening Committee or the Administrative Committee of the High Court had not been placed before the Full Court. In the counter affidavit, such assertion has been denied and it has been indicated that the recommendation of the Administrative Committee was placed before all the Hon'ble Judges by way of circulation.

14. Relevant records have been produced. A perusal of the records indicates that such recommendation of the Administrative Committee was circulated among the Hon'ble Judges. It appears from the records that eleven Hon'ble Judges by their separate endorsement had accepted the suggestion given by the Administrative Committee, whereas one Honourable Judge, while giving his comment, had raised the question as to why the matter was not placed before the Full Court for discussion. Two other Honourable Judges without giving approval, raised the question that the matter should be placed before the Full Court for consideration and the rest of the Honourable Judges had not given an opinion either ratifying the recommendation of the Administrative Committee or deferring from such opinion. Thereafter, the then the Honourable Chief Justice noted that the majority of the Judges had accepted the recommendation and accordingly the recommendation was sent to the Government. Since majority of the

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Honourable Judges, who had given an opinion, had ratified the recommendation of the Administrative Committee and other Honourable Judges have not opined, the then Honourable the Chief Justice correctly assumed that the opinion of the Full Court was for recommending compulsory retirement of the concerned officer. The submission made by the petitioner that the matter was not placed before the Full Court, therefore, cannot be sustained.

15. The second contention of the petitioner is to the effect that the work done statement does not indicate that the petitioner was useless and had become dead wood warranting compulsory retirement.

It would not be possible for the Court to come to any different conclusion on this aspect as this Court cannot be expected to sit as an appellate authority in the matter. The scope of interference in such matter is being very limited, it has to be seen whether the recommendation for compulsory retirement was without any basis whatsoever requiring interference.

16. In the present case, various entries in the Annual Confidential Reports of the petitioner, which were placed before the Administrative Committee, have been placed before us. Some of the entries indicate that there had been shortfall and there was scope for improvement. Since we are not expected to sit as an appellate authority, we are unable to accept this submission.

17. The third contention of the petitioner is to the effect that the order of compulsory retirement had been given much publicity and it has the effect of casting stigma on the petitioner. It is no doubt true that any order relating to compulsory retirement of an officer, more particularly a judicial officer, is given much publicity in the media and that, however, cannot be a ground to hold that compulsory retirement casts a stigma. It is well known that the order of compulsory retirement in terms of Fundamental Rule 56(2) is not considered as a stigma and only where it is imposed as a punishment such order is considered as a stigma.

18. Learned counsel for the petitioner has also contended that there is no factual basis to justify few adverse remarks. Some of the entries relate to assessment of quality and quantity of work done by the petitioner. Some of the entries relate to reputation of the petitioner. So far as the entries relate to quantity of work are concerned, the concerned reporting officer has made such comments on the basis of available records which have been subsequently re-assessed and re-confirmed by the Honourable Judge in charge of the District. It cannot be said that such comments are without any basis.

19. Learned counsel for the petitioner has also raised a contention to the effect that some enquiry had been held by the District Judge, which had been examined by the High Court, and the explanation

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given by the petitioner at that stage having been accepted, on the self-same basis, the order of compulsory retirement should not have been passed.

The petitioner is not correct in his assumption that the order of compulsory retirement is based on the basis of the report submitted by the District Judge or the Vigilance Committee alone. As apparent from the records and the proceedings of the Administrative Committee, relevant entries in the Annual Confidential Reports as well as the Vigilance Report and other reports were considered.

20. The last contention and, according to the petitioner, the strongest contention is required to be noticed. It is submitted by the learned counsel for the petitioner that adverse entries related to the period 2000-2001, whereas the petitioner was promoted as District Judge (in Fast Track Court) in the year 2002 and in view of such promotion, the effect of adverse entries earlier should be taken to be wiped out and in the absence of any other material, merely on the basis of some remarks, which had been made before the promotion of the petitioner, such order of compulsory retirement should not have been passed. Learned counsel has further submitted that the scheme relating to appointment of persons on promotion to Fast Track Court as District Judge contemplates that such promotion should be on the basis of merit and, therefore, it must be taken that the petitioner was considered meritorious enough to be promoted in the year 2002 and therefore there is absolutely no reason for his compulsory retirement soon thereafter.

21. Focusing on this aspect, the petitioner has referred to several decisions. In AIR 1980 SC 269 (SWAMI SARAN SAKSENA v. STATE OF UTTAR PRADESH), the concerned officer had been allowed to cross the second efficiency bar before the order of compulsory retirement. It was observed :-

> "3. ... It is not possible reasonably to come to the conclusion that the compulsory retirement of the appellant was called for. This conclusion follows inevitably from the particular circumstances, among others, that the appellant was found worthy of being permitted to cross the second Efficiency Bar only a few months before. Ordinarily, the court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a Government servant. And we would have been even more reluctant to reach the conclusion we have, when the impugned order of compulsory retirement was made on the recommendation of the High Court itself. But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second Efficiency Bar the appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement. The

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entries in between in the records pertaining to the appellant need to be examined and appraised in that context. There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed. The appellant will be deemed to have continued in service on the date of the impugned order."

22. In AIR 1982 SC 793 (D. RAMASWAMI v. STATE OF TAMIL NADU), the person had been promoted soon before the order of retirement and such promotion was on the basis of merit and ability. It was observed :-

"3. ... There was an adverse entry in the confidential file of the appellant in 1969. The basis of the entry was knocked out by the Order dated November 29, 1974 of the Government, and effect of the entry was blotted out by the promotion of the appellant as Deputy Commissioner. After his promotion as Deputy Commissioner there was no entry in the service book to his discredit or hinting even remotely that he had outlived his utility as a Govt. servant. If there was some entry, not wholly favourable to the appellant after his promotion, one might hark back to similar or like entries in the past, read them all in conjunction and conclude that the time had arrived for the Government servant to quit Government service. But, with nothing of the sort, it is indeed odd to retire a Government servant a few months after promoting him to a selection post.

4. In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned Counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his promotion. We do not say that the previous history of a Government servant should be completely ignored once he is promoted. Sometimes, past events may help to assess present-conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past."

23. Similar views have been expressed in 1994 Supp.(3) SCC 424 (S. RAMACHANDRA RAJU v. STATE OF ORISSA). As a matter of fact in (1992) 2 SCC 299 (cited above) in para 34(iv) it is indicated that if a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

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24. The effect of any adverse entry relating to integrity, whether before promotion or after promotion, however, stands on a different footing as it is apparent from several subsequent decisions of the Supreme Court. For example, in (2000) 8 SCC 395 (BADRINATH v. GOVERNMENT OF TAMIIL NADU AND OTHERS), after referring to the ratio of the decision laid down in Baikuntha Nath Das case, it was observed :-

> "56. The above sentence in Gurdas Singh needs to be explained in the context of the Bench accepting the three-Judge Bench ruling in Baikuntha Nath Das. Firstly, this last observation in Gurdas Singh case does not go against the general principle laid down in Baikuntha Nath Das to the effect that though adverse remarks prior to an earlier promotion can be taken into account, they would have lost their "sting". Secondly, there is a special fact in Gurdas Singh case namely, that the adverse remarks prior to the earlier promotion related to his "dishonesty". In a case relating to compulsory retirement therefore, the sting in adverse remarks relating to dishonesty prior to an earlier promotion cannot be said to be absolutely wiped out. The fact also remains that in Gurdas Singh case there were other adverse remarks also even after the earlier promotion, regarding dishonesty though they were not communicated. We do not think that Gurdas Singh is an authority to say that adverse remarks before a promotion, however remote, could be given full weight in all situations irrespective of whether they related to dishonesty or otherwise. As pointed in the three-Judge Bench case in Baikuntha Nath Das which was followed in Gurdas Singh they can be kept in mind but not given the normal weight which could have otherwise been given to them but their strength is substantially weakened unless of course they relate to dishonesty."

As a matter of fact, in para 58, the Supreme Court had observed :-

> "58. From the above judgments, the following principles can be summarised:
>
> (1) Under Article 16 of the Constitution, right to be "considered" for promotion is a fundamental right. It is not the mere "consideration" for promotion that is important but the "consideration" must be "fair" according to established principles governing service jurisprudence.
>
> (2) Courts will not interfere with assessment made by Departmental Promotion Committees unless the aggrieved officer establishes that the non-promotion was bad according to Wednesbury principles or it was mala fides.
>
> (3) Adverse remarks of an officer for the entire period of service can be taken into consideration while promoting an officer or while passing an order of compulsory retirement. But

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the weight which must be attached to the adverse remarks depends upon certain sound principles of fairness.

(4) If the adverse remarks relate to a distant past and relate to remarks such as his not putting his maximum effort or so on, then those remarks cannot be given weight after a long distance of time, particularly if there are no such remarks during the period before his promotion. This is the position even in cases of compulsory retirement.

(5) If the adverse remarks relate to a period prior to an earlier promotion they must be treated as having lost their sting and as weak material, subject however to the rider that if they related to dishonesty or lack of integrity they can be considered to have not lost their strength fully so as to be ignored altogether.

(6) Uncommunicated adverse remarks could be relied upon even if no opportunity was given to represent against them before an order of compulsory retirement is passed."

25. In the present case, some of the adverse entries relate to integrity of the officer. As apparent from G.O.Ms.No.623 dated 14.7.1983, one purpose for invoking the power of compulsory retirement is to weed out the persons whose integrity is in question. In the present case, we have perused the adverse entries made against the petitioner, some of which relate to his integrity. Therefore, even though the petitioner was promoted as District Judge in Fast Track Court and possibly on the basis of merit, adverse entries relating to integrity cannot be said to have been totally wiped out. In this connection, the observations made by the Supreme Court in 2003(7) SCC 179 (cited supra) cannot be lost sight of. As had been said above, Judges, like Caesar's wife, must be always above suspicion.

26. For the aforesaid reasons, we are unable to accept the submissions made by the petitioner and the writ petition is therefore dismissed. No costs.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Govt.,
State of Tamil Nadu,
Public (Special-A) Dept.,
Fort St. George, Chennai-9.

2. The Registrar General,
High Court of Madras,
Chennai-104.

3. The Secretary,
Tamil Nadu Legal Cell,
High Court Buildings,
Chennai-104.

1 cc To Mr.T.R.Rajaraman, Advocate, SR.27872.
1 cc To The Government Pleader, SR.28178.

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